91-187

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CHARLES E. WILLIAMS and
LORRAINE A. WILLIAMS,

Petitioners,

v.

BOARD OF TRUSTEES OF THE
MOUNT JEZREEL BAPTIST
CHURCH and HAROLD E. TRAMMELL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

The Superior Court of the District of Columbia is an article I court required by D.C. Code § 11-101(2)(B) to conduct its business according to the Federal Rules of Civil (and Criminal) Procedure. Thus, Superior Court rules must be construed in light of the meaning of the corresponding Federal Rules.[1] The important questions raised by the determinations below are:

1. Did the trial court violate the statutory mandate by failing to comply with the Rule 53(b) requirement to terminate the reference to special masters when the "exceptional" circumstances causing the reference no longer existed and by relying on the masters' delinquent reports without hearing timely objections thereto as required by Rule 53(e)?

2. Did the trial court violate the statutory mandate by determining that prosecution of this case is precluded by the judgment in a prior case, involving different parties and different circumstances, and by upholding, under Rule 8(c), the res judicata defense that was asserted 4 years after it had been intentionally waived and 2 years after petitioners relied on the waiver in filing their motion to terminate the reference to special masters and for judgment on the pleadings?

3. Did the trial court violate the statutory mandate by failing to determine petitioners' motion for judgment on the pleadings and by determining, as a preliminary matter under Rule 12(d), that petitioners lacked a sufficient ownership interest in a congregational church's charitable property for standing to sue church officials for breach of trust?[2]

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[1] *Campbell v. United States*, 295 A.2d 498, 501 (D.C. App. 1972); *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 65 (D.C. App. 1980).

[2] *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 715 (1872), holding that, in the absence of a jurisdictional issue, the standing of a Presbyterian Church attendee to sue trustees in federal court could not be determined as a preliminary question.

4. Did the trial court violate the statutory mandate by failing to give conclusive effect to the admissions on file in accordance with Rules 8(b), 8(d), and 36(b)?

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TO: The Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Charles E. Williams and Lorraine A. Williams, petitioners, hereby make application to the Honorable Court for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals in this case.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals, filed April 18, 1991, and reported at 589 A.2d 901-912, is reproduced in the appendix, *infra*, pp. 1a through 23a. The unreported memorandum of the Superior Court of the District of Columbia (Thompson, J.) is reproduced in the appendix at pp. 31a through 37a.

JURISDICTION

The judgment of the court of appeals (appendix, *infra*, at p. 24a) was entered April 18, 1991. The petition for rehearing, timely filed April 30, 1991, was denied May 15, 1991. Appendix, p. 25a. This Court has jurisdiction to review by certiorari under 28 U.S.C. §§ 1257, 2101(c).

STATUTE INVOLVED

D.C. Code § 11-946, provides:

> The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section.

RULES INVOLVED

The Superior Court Civil Rules involved, corresponding to the Federal Rules of Civil Procedure, are:

Rule 8. General rules of pleading.

. . . .

(c) *Affirmative defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury

by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Rule 12. Defenses and objections—When and how presented -By pleading or motion—Motion for judgment on the pleadings.

. . . .

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 36. Requests for admission.

. . . .

(b) *Effect of admission.* Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who ob-

tained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 53. Masters.

. . . .

(e) *Report.*

(1) Contents and filing. The master shall prepare a report upon the matter submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the Clerk of the Court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The Clerk shall forthwith mail to all parties notice of the filing.

(2) In non-jury actions. In an action to be tried without a jury the Court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in SCR Civil 12-I and 6(d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

STATEMENT OF THE CASE

Nature of the Case

This litigation was commenced September 27, 1982. Jurisdiction was invoked under D.C. Code § 11-921(a) for declaratory relief.

Plaintiffs (petitioners)—from whom the communing fellowship on irregular occasions voted to withdraw fellowship—seek a determination of their rights as members of the corporate body of the Mt. Jezreel Baptist Church in the control and use of the edifice located in the Capitol Hill Historic District at 501 E Street, S. E., which the pastor and board of trustees abandoned for religious worship in violation of the 1883 corporate charter.[3]

The pastor and trustees moved to dismiss on the ground that petitioners (the Williamses) were not bona fide members of the church. The motion was granted on the ground that the Williamses, not being members of the church, lacked the ownership interest in the property essential for standing to sue.

In affirming dismissal of the suit,[4] the court below failed to articulate a reason why the Williamses (who, despite the disfellowship votes, continued to enjoy the ecclesiastical and corporate rights as members, attendants, and regular contributors until they instituted this suit) did not come within the rule that an ownership interest in the

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[3] The vote to disfellowship Charles E. Williams followed his attempt to prevent the diversion of church funds to the pastor under the guise of a loan in violation of the internal revenue laws. Similarly, the vote to withdraw fellowship from Lorraine A. Williams followed her participation in a suit for an accounting (for church funds and trust fund taxes withheld from employees' wages but not paid over to the United States) when the pastor and trustees refused to obey the unanimous order of the congregation to submit the church's books of account to an outside audit examination.

The questions of whether the pastor and trustees are in contempt of court by selling the edifice in violation of the stay of sale orders; whether they committed a fraud on the court, and whether the sale was a fraudulent conveyance are presently being litigated on remand of the related case of *Mt. Jezreel Christians Without a Home v. Board of Trustees*, Civil Action No. 8775-84 (D.C. Super.).

[4] The trial court's Rule 11 sanction against petitioner Charles E. Williams was reversed and remanded.

charitable property is not necessary to standing to enforce the terms of the charitable trust.[5]

Review by certiorari is sought in order to obtain an authoritative construction and enforcement of the Federal Rules of Civil Procedure and the corresponding Superior Court Civil Rules.

Noncompliance with Rule 8(c)

The rule requires that the res judicata defense be timely and affirmatively pleaded. But the defense, not pleaded in the answer, was asserted in the motion to dismiss 4 years after the answer was filed and 2 years after the Williamses relied on the intentional waiver of the defense when filing their motion for judgment on the pleadings.[6] The delay in asserting the defense was due, in part at least, to the dilatory conduct of the respondents.[7]

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[5] In *YMCA v. Covington*, 484 A.2d 589, 591 (D.C. App. 1984), nonmembers of the YMCA, residing in the area of a branch building, were held to have standing to enforce the charitable trust in operating the building. An ownership interest in the charitable property was not necessary to enforce the terms of the charitable trust.

[6] The respondent pastor and trustees pleaded merely that the "amended complaint is an attempt to relitigate matters previously litigated." Record (2/1/90), pp. 203-204. They failed to show that the character of the relief sought in the prior case and this case was the same; that the mode of proceeding was the same; that the nature of the remedies sought was the same, and that the parties were identical. The court below held that the one sentence sufficiently pleaded the res judicata defense. *Williams v. Mount Jezreel Baptist Church*, 589 A.2d at 905, appendix, *infra*, at 4a-5a.

[7] The dilatory conduct consisted of (1) prosecuting a motion to disqualify the trial judge, which was held to be frivolous; (2) innundating the trial court, court of appeals, the D.C. Commission on Judicial Disabilities and Tenure, the Board of Professional Responsibility, and the Internal Revenue Service with petitions, motions, complaints and letters, seeking to restrain the trial court from proceeding with the case; (3) petitioning the Congress and the President of the United States to fire petitioner Charles E. Williams, an IRS senior attorney, and the IRS Chief Counsel, as well as the Commissioner of Internal Revenue; (4) discrediting the trial judge in the print media, accusing him of fraud and corruption in selecting friends and associates as special masters;

Nevertheless, the trial court granted the motion to dismiss this suit in spite of the fact (1) that the judgment relied on in bar of this case did not involve the same parties; (2) that the facts and circumstances in this case did not exist when the first case was brought; (3) that the pastor and trustees failed to explain the delay in asserting the res judicata defense, and (4) that the Williamses were substantially prejudiced by the delay. In any event, since petitioner Lorraine A. Williams was not a party to the prior federal case (note 19, *infra*) her claim is not barred.[8]

Noncompliance with Rule 8(d)

The verified amended complaint, filed February 27, 1984, alleges that the Williamses had standing to sue as "member[s] of the corporate body of the Mt. Jezreel Baptist Church." In this regard, the third defense of the verified answer, served March 5, 1984, admits paragraph 4 of the amended complaint, which alleges:

> Under the rules or discipline of the Mt. Jezreel Baptist Church, as well as chapter 9 of Title 29, *District of Columbia Code*, the congregation consists of two official bodies, *viz.*, the *church* (ecclesia) or communing fellowship and the *society* or corporate body. The pastor and deacons administer the ecclesiastical affairs and the defendant board of trustees is authorized by law to manage the corporate estate "in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws

(5) filing formal charges of corruption and racism against the trial judge with the D.C. Commission on Judicial Disabilities and Tenure, and (6) prosecuting a frivolous third-party complaint against the trial judge and all trial and appellate judges in the District of Columbia with full knowledge that judges are absolutely immune to suit. *See Milloy*, "Judging the Judge," *The Washington Post*, July 21, 1987, B3.

[8] *Rollins v. District of Columbia*, 265 F.2d 347, 348-349 (D.C. Cir. 1959).

in force in the District of Columbia. *D.C. Code* § 29-904 [Record (2/1/90), pp. 195-196.]

Moreover, the pastor and trustees admitted, by the intentional failure to deny, the following allegations:

> 7. During all times relevant to this cause, the defendants [respondents] owed the duty of good faith performance of their respective offices and of fair and faithful administration of Church affairs to plaintiffs [petitioners] with due regard for plaintiffs' personal rights as attendants, regular contributors, and members of the congregation or incorporated society in accordance with and as required by the discipline of the Mt. Jezreel Baptist Church, and the defendants admitted the truth of these allegations in Civil Action No. 2554-80, which was voluntarily dismissed, and Civil Action No. 17916-81, now [then] pending in this court. [Record, *op. cit.* at 196-197.]
>
> . . . .
>
> 13. The defendants [respondents] violated the plain duty imposed by the charter and the rules or discipline of the Mt. Jezreel Baptist Church to the injury of the plaintiffs [petitioners] and the congregation by (a) by discontinuing use of the sanctuary building at Fifth and E Streets, S. E., for religious worship on the ground that the building is unsafe even though the District of Columbia Inspector and Structural Engineer concluded that the building was and is safe for religious services; (b) by selling or otherwise disposing of the Church's furniture, fixtures, and other property without accounting for the proceeds and without informing the congregation or seeking its instructions in the manner described in the declaration file with the original complaint and incorporated herein by reference; and (c) by failing to take any steps or present any plan for

> the preservation of the sanctuary building, or (d) by failing to ascertain whether the congregation desires to preserve and rehabilitate "the church building on the southeast corner of Fifth Street and E Street, southeast," or whether it desires to give up the privilege of incorporation under the 1870 Act and relocate elsewhere.[9] [*Id.* at 198.]
>
> 14. The defendants [respondents], jointly and in concert with others, knowingly and wantonly violated the duty owed to plaintiffs [petitioners] and, in reckless disregard of plaintiffs' rights as members of the corporate body, accept plaintiffs' contributions to the Church but wrongfully refuse to include plaintiffs' names on the congregation's contributors lists without the authority of the congregation and in violation of the internal revenue laws requiring the maintenance and retention by churches of permanent records of contributions and related and unrelated income and expenses. [*Id.* at 198-199.]

Under the rule, the foregoing averments are admitted because they were not denied in the verified answer. But the courts below refused to give effect to the rule.

In a related case referenced with this case to the special masters but decided by the trial judge for the Williamses before the masters filed their report, the pastor and trustees admitted under oath:

> (1) that the congregation, an independent, self-governing corporate body unassociated with any ecclesiastical system, is a religious society organized under the laws of the District of Columbia;

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[9] According to the advice of the Superintendant of Corporations, made of record, amendment of the charter to authorize the religious services of the congregation elsewhere would require acceptance of the provisions of the Nonprofit Corporation Act of 1962.

> (2) that the congregation or corporate body is a society comprised of all attendants who are regular contributors whether members of the church or not;
>
> (3) that the pastor and trustees owed the duty of good faith performance of their respective offices to the Williamses with due regard for the Williams's personal rights "as attendants, regular contributors, and members of the congregation"; and
>
> (4) that the congregation has no bylaw, regulation, guideline or rule barring attendants who are regular contributors from general corporate membership meetings of the church.

Answers to requested admissions 12, 15, 33, 34 and 35 on file in *Harold E. Trammell, et al. v. Lorraine A. Williams, et al.*, Civil Action No. 17916-81 (D.C. Super.). (See note 17, *infra*.)

Noncompliance with Rule 36(b)

Under the rule, any matter admitted "is conclusively established" for purposes of this case unless withdrawn or amended. In this case, none of the admitted matters was withdrawn or amended.

It is undisputed that Hiscox, *The New Directory or Baptist Churches* (1960), was adopted in 1962 as the guidance document of the Mt. Jezreel Baptist Church and is the basis of the discipline of the church (Admissions 2 and 3, Record, *op. cit.* at 186); that Hiscox defines withdrawal of the right hand of fellowship as withdrawal of the ecclesiastical right of communion or celebration of the "Supper" (Admission 14, *id.* at 188); that fellowship may not be withdrawn from a member for the exercise of legal rights because "personal rights are to be held sacred" (Admission 16, *id.*) that while the church voted to withdraw the right hand of fellowship from each of the Williamses on separate occasions, communion was never withheld from them; that the Williamses continued in fel-

lowship as members, regular attendants and regular contributors, and that they were not actually excluded from fellowship until after they filed this suit in 1982. (Admissions 18 and 19, *id.* at 189.) The admissions were made under oath. (See note 17, *infra.*) The court below concluded, however, that "this is not a case where the Williamses were expelled from membership to foreclose their bringing this lawsuit." Slip op., appendix, *infra*, at 14a, n. 10.

The pastor and trustees conceded that the Williamses had standing to maintain suit (1) by failing to join the issue (Record, *op. cit.* at 203); (2) by conceding the motion for appointment of the temporary receiver (Conclusion 4, Supplemental Record No. 1, at p. 15), and (3) by the intentional waiver of the res judicata defense. Record, *op. cit.* at 259.

In the report of findings of fact and conclusions of law, Special Masters Speights and Mitchell failed to give effect to the admissions on file or to inquire into whether each of the Williamses was given due notice of the charges against him or her and accorded the right of trial before the congregation in accordance with the stipulated rules, *viz.*, Hiscox, *The New Directory for Baptist Churches*, and *Robert's Rules of Order*.[10] (Joint Exhibit 6.) Both works ascribe to the requirement that "the opportunity to be heard" must be granted "at a meaningful time and in a meaningful manner."[11]

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[10] The court of appeals states, slip op., appendix, *infra*, at 13a, 15a, that the Williamses rely on E. Hiscox, *Principles & Practices for Baptist Churches* (1985), and that they proffered no church articles of incorporation, bylaws or rules adopted pursuant to the District of Columbia Code. The opinion should be revised to show that the pertinent articles of incorporation are quoted in the amended complaint; that the Williamses rely on the admissions on file showing that the church has no constitution and bylaws; that the guidance document adopted by the church in 1962 is Hiscox, *The New Directory for Baptist Churches* (1960), and that the U.S. Court of Appeals for the District of Columbia Circuit regarded this work and *Robert's Rules of Order* as forming the basis of church discipline.

[11] *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). While Hiscox

The courts below failed to give effect to the admitted facts or to finally determine whether the right hand of fellowship had been fraudulently withdrawn from the Williamses as stated by the trial judge in his "interim" findings of fact.

Noncompliance with Rule 12(c)

The Williamses, on September 22, 1986, filed a motion for judgment on the pleadings. The motion was based on the facts admitted in the pleadings, supplemented by the admissions on file.

Earlier, the trial court—having determined that the Williamses had standing to maintain this suit, as alleged—granted their motion for appointment of a receiver of the church's corporate assets. Accordingly, the trial court entered an order on June 12, 1986, confirming appointment of the receiver (Record, *op. cit.* at 179-182) and filed findings of fact and conclusions of law in support thereof. Supplemental Record No. 1, pp. 1-16. The trial court found, in pertinent part:

> 20. The Court finds that defendants caused the congregation to vote to withdraw membership from plaintiff Charles E. Williams, allegedly in violation of the stipulation filed in Civil Action No. 3346-66, United States District Court for the District of Columbia, on February 27, 1967; that defendants caused the congregation to vote to withdraw membership from the other plaintiffs herein, allegedly in violation of the rules or discipline of the Church, because plaintiffs instituted a suit for an accounting against defendants for Church funds and trust fund taxes collected from employees but not paid over to the United States; that on June 10, 1983, the defendants voted to

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requires the vote of the majority *present and voting* to carry the disfellowship resolution, *Robert's Rules* require the vote of two thirds of the quorum voting to expel a member. The record contains no evidence showing that the rule of Hiscox or *Robert's Rules* was complied with in the vote to withdraw fellowship from either of the Williamses.

recommend to the congregation and on June 17, 1983, they caused the congregation to vote to withdraw membership from members of the Church, not parties to this litigation, allegedly in violation of the Church's rules or discipline, because such members testified before the Mayor's Agent for Historical Preservation against granting the permit sought by defendants for demolition of the sanctuary building in issue; that sometime after Civil Action No. 12510-82 was instituted, defendants, without the authority of the congregation or rules or discipline of the Church, barred plaintiffs Charles E. and Lorraine A. Williams from entering the premises of any building owned or controlled by the Mt. Jezreel Baptist Church for any purpose, including public worship, funerals, weddings, and that on August 2, 1984, defendants voted to recommend to the congregation that membership should be withdrawn from any member of the congregation who exercises his or her First Amendment right to sue Church officials irrespective of the merit of the claim.

21. The Court finds that defendants have egregiously and outrageously mismanaged the affairs of the corporate estate of the Mt. Jezreel Baptist Church in breach of the fiduciary duty owed to the congregation. The Court further finds that each of the following occurrences constitutes a badge of fraud:

. . . .

c. Defendants' failure to confer with the congregation or seek its advice and counsel on settling the pending litigation as directed by the Court;

. . . .

e. Defendants' failure to collect, truthfully account for and pay over to the United States the

> employment taxes withheld from employees' wages; or to have the federal tax liens for the trust fund taxes discharged, or to collect, truthfully account for and pay over to the United States FICA taxes for current Church employees;
>
> . . . .
>
> g. Defendants' consistent failure to obey the discovery rules, subpoenas and the Court's orders in these and other cases;
>
> h. Defendants' attempts to expel members and bar them from entering upon the corporate property for any purpose, allegedly in violation of the rules or discipline of the Church, when such members express disagreement with defendants' management practices and procedures. [*Id.*]

The court of appeals affirmed the appointment of the temporary equity receiver.

Sixteen months later, in a memorandum and order filed October 30, 1987, in the related case of *Harold E. Trammell, et al. v. Lorraine A. Williams, et al.*, Civil Action No. 17916-81 (referenced with this case to the special masters but decided before the masters' report was filed) the trial court determined, inter alia, that the Williamses were members of the church, finding:

> The second underlying suit, captioned *Lorraine A. Williams and Charles E. Williams v. George A. Hubert, et al.*, Civil Action No. 2554-80, filed February 21, 1980, was a suit to recover damages by reason of the unlawful conduct of the pastor and deacons in conspiring to deprive the Williamses of their rights as members of the congregation. In that case, the pastor and deacons admitted they owed duties to the Williamses as members of the congregation by their failure to deny the allegation of membership in the complaint and by their admission under oath. The

> suit was dismissed during trial upon motion of the Williamses when the Court indicated it believed the Williamses were members of the Church. . . .
>
> The third underlying suit, captioned *Lorraine A. Williams and Charles E. Williams v. Balis A. Dunlap, Jr., et al.*, Civil Action No. 2562-80, filed February 21, 1980, was a suit for an accounting covering years 1976 through 1979. The suit came on for trial and was voluntarily dismissed along with the *Hubert* case. The dismissal of the *Dunlap* case was not a favorable termination because the only issue raised by the trustees in that case was whether the suit could be maintained by the Williamses as members of the Mt. Jezreel Baptist Church. The record shows that the pastor and deacons admitted in *Hubert* that the Williamses are members of the church.

The pastor and trustees took no appeal from the judgment entered in Civil Action No. 17916-81.

In opposing the Williams's motion for judgment on the pleadings, the pastor and trustees stated that they "clearly crafted the answer" to address the "First Amendment" rather than the standing, res judicata or any other issue. Record, *op. cit.* at 259.

The Williams's motion for judgment on the pleadings came on for hearing on March 7, 1988, at which time 10 exhibits in further support of the motion were admitted in evidence. Plaintiffs' Exhibit 10—the Williams's brief on standing submitted at the request of Special Masters Washington and Goldson—was received in evidence without objection. The pastor and trustees offered no evidence and made no argument. But they caused the hearing to be terminated by stipulating a basis for settlement out of court. *Id.* at 270. Following the hearing, they repudiated

the stipulation which was not enforced.[12] The motion for judgment on the pleadings was left undetermined. The pastor and trustees thereafter employed new counsel who filed the motion to dismiss asserting the res judicata defense. The motion was granted.

Rule 12(d) required that the motion for judgment on the pleadings be determined long before the motion to dismiss was filed. In their opposition to the motion for judgment on the pleadings, the pastor and trustees, not having raised the res judicata defense, agreed on the record that there was no genuine issue of fact for trial.[13] Record, *op. cit.* at 259.

Noncompliance with Rule 53(a)

Under date of December 16, 1983, the trial court appointed Melvin J. Washington, Esquire, and Amy R. Goldson, Esquire, as special masters "to supervise and regulate discovery, to hear the parties" and report their findings and conclusions. Appendix, *infra*, pp. 28a to 30a. The masters filed their report on May 14, 1984, and were discharged in September of 1985 without review of the findings and conclusions. The parties shared the costs of the reference. The Williams's share was $3,950.00.

By a detailed order entered November 14, 1985, the trial court referenced the case to Special Masters J. Clay Smith, Jr., Esquire, and Nathaniel H. Speights, Esquire. Subsequently, Mr. Smith, who received compensation and expenses in excess of $8,000.00, was replaced by the appointment of Iverson O. Mitchell, III, Esquire. The Williamses deposited $1,750.00 in the court's registry pursuant to the court's direction that the parties to the 3 suits

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[12] Valid stipulations are controlling and conclusive and may not be violated in the suit in which made or in a subsequent suit. *Chapman v. Potomac Chemical Co.*, 159 F.2d 459, 460 (D.C. Cir. 1947).

[13] Like the summary judgment rule, the judgment on the pleadings rule should be interpreted to accomplish the purpose of isolating and disposing of unsupported defenses. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 325 (1986). The rule, as others, was designed "to secure the just, speedy and inexpensive determination of every action." Super. Ct. Civ. R. 1.

referenced deposit $8,500.00 to cover the expenses of the reference.

Special Masters Speights and Mitchell, who filed their final report on September 2, 1988, were discharged pursuant to the order of March 24, 1989. (Appendix, *infra*, pp. 31a, 37a.) Timely objections to the report were not heard or determined. Since there is no order of record directing payment of the masters' compensation, as required by the rule, such costs in excess of $40,000.00 were borne, ostensibly, by the church.

One of the questions referenced to the second set of special masters (Speights and Mitchell) was:

> Do the plaintiffs in Civil Action No. 12510-82 [the Williamses] have standing to maintain the suit? Were they expelled from membership in accordance with the rules and discipline of the Mt. Jezreel Baptist Church?

The res judicata issue had not been referenced to the masters.

The Williamses filed their motion to terminate the reference and for judgment on the pleadings when Special Masters Speights and Mitchell failed to file a report as directed. Record, *op. cit.* at 250. Despite resolution at the pleading stage of the "complex" issues thought to justify the reference, the trial court—15 months after the Williamses filed their motion to terminate the reference—extended the due date for filing the masters' report to December 18, 1987. But the report was not filed until 9 months after expiration of the extended due date and 2 years after the Williamses sought to terminate the reference.

Finally, the delinquent reports of Special Masters Speights and Mitchell recommended dismissal of the suit on the ground of res judicata, a ground that had not been referenced to them. At the same time, they reported no

findings on the specific matters referenced to them, such as whether the votes to withdraw fellowship from the Williamses were taken after due notice of the disfellowship proceedings and an opportunity to be heard in accordance with the stipulated rules of the church.

Noncompliance with Rule 53(e)(1)

The first set of special masters (Washington and Goldson) conducted an evidentiary hearing on standing on February 15, 1984. Thereafter, on March 4, 1984, the pastor and trustees filed their answer to the amended complaint in which the issue of standing was not joined because they failed to admit or deny paragraphs 7 and 14 of the amended complaint. These paragraphs alleged that the Williamses are bona fide members of the congregation, and that the pastor and trustees knowingly and wantonly violated the duty owed to the Williamses as members of the corporate body of the church.

Special Masters Washington and Goldson filed their report on May 11, 1984, concluding that the Williamses had "standing" to maintain this suit, and that the trial court had jurisdiction to "make a limited or marginal inquiry" and determine whether the church's rules regarding "withdrawal of fellowship" were complied with. The res judicata defense, not having been referenced [see appendix, *infra*, pp. 28a to 29a], was not addressed. As indicated, the trial court took no action to accept, adopt, modify or reject the report in accordance with the rule.[14]

In relying on the disfellowship resolutions alone, Special Masters Speights and Mitchell, and the courts below as well, exalted form over substance. They gave effect to the 1967 and 1979 disciplinary resolutions that the church never enforced until after the Williamses instituted this

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[14] The court of appeals' slip op., appendix, *infra*, at 11a, n. 8, should be revised to reflect that the report of Special Masters Washington and Goldson (Record, *op. cit.* at 206-212) recommending that the Williamses had standing to maintain this suit was indeed before the court in the record on appeal filed February 1, 1990.

litigation.[15] The trial court's earlier ruling in the related *Dunlap* case—involving the same parties hereto—that the Williamses are members of the church was entirely disregarded.

Noncompliance with Rule 53(e)(2)

The Williamses objected to the reports of Special Masters Speights and Mitchell on the grounds:

> (1) that the standing issue, not joined in the pleadings, was not an issue in the case;
>
> (2) that the masters failed to determine (a) whether the church departed from the stipulated rules in voting to exclude each of the Williamses from the fellowship, and (b) whether the vote in each case was tainted with fraud;
>
> (3) that the masters entirely failed to take evidence on issues 2, 3 and 4 referenced to them;
>
> (4) that the masters' findings 5, 6, 9, 10, 13 and 15, not supported by evidence of record, are clearly erroneous;
>
> (5) that the masters' claim for compensation should be denied or reduced since the court heard the motion for judgment on the pleadings in this case, and finally disposed of the other 2 cases referenced, without the assistance of the masters' reports;

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[15] In this jurisdiction, it is not enough to show merely that the congregation voted to withdraw fellowship from a member. The excluded member must be shown to have had due notice of the proceedings and a fair opportunity to be heard on the charges. *See Taylor v. Jackson*, 50 App. D.C. 381, 273 F. 345 (1921), where the arbitrary expulsion of a member of the Florida Avenue Baptist Church, without adequate notice to him, was voided, and *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1873), in which the arbitrary excommunication of the trustees of the Third Baptist Church was voided. Both of these District of Columbia cases were cited and relied on by the court in *Baugh v. Thomas*, 56 N.J. 203, 265 A.2d 675 (1970).

(6) that the masters failed to recommend disposition of the motion for taxing the costs incurred by the Williamses in opposing the frivolous motion to disqualify the trial judge, as required by the order of reference; and

(7) that the masters' claim for compensation for attending settlement conferences, conferences with the trial judge and receiver, and court hearings, reviewing correspondence of the parties and the judge, and preparing routine orders entered by the judge should be denied.

Record, *op. cit.* at 271, 280, 316.

The trial court failed to hear or act upon the objections as required by the rule.

REASONS FOR ALLOWANCE OF THE WRIT.

I

The following egregious procedural errors of the trial court violated due process and deprived petitioners of their day in court: (1) appointment of a series of special masters and failing to terminate the reference when the "exceptional" circumstances justifying the reference no longer existed; (2) reliance on the unreviewed special masters' reports; (3) allowing respondents to assert the res judicata defense after petitioners relied on the intentional waiver thereof and failing to dispose of unsupported defenses on petitioners' motion for judgment on the pleadings[16]; (4) determining, as a preliminary question, petitioners' standing to sue trustees of a congregational church for breach of trust, and (5) failing to give conclusive effect to the admissions on file.

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[16] In this connection, the court below appears to require petitioners to plead the res judicata defense to their own claim. The court said: "In the amended complaint, however, the Williamses did not advert to their earlier expulsions from church membership." Slip op., appendix, *infra*, p. 4a.

In view of the admissions on file in this case and the related cases, all of which were made under oath, the pastor and trustees were estopped to deny the Williams's standing to maintain this suit.[17]

The record establishes the elements of standing elaborated in *Allen v. Wright*, 468 U.S. 737, 751 (1984), to wit: (1) that petitioners suffered personal injury resulting from the improper use of church property in question and from exclusion from the church after this suit was commenced; (2) that the injury is fairly traceable to the alleged unlawful conduct of the pastor and trustees which the trial court found was fraudulent, and (3) that the injury was likely to be redressed by the requested relief.

Petitioners were embarrassed and humiliated by the 1967 and 1979 expulsion resolutions procured by the alleged fraud of the pastor and trustees. But they were not substantially injured by mere passage of the resolutions because petitioners were continued in fellowship and as regular attendants and regular contributors. Therefore, petitioners were injured, for purposes of standing, by the church officials' breach of trust.

Nevertheless, the court below, relying on the masters' preliminary report that had not been reviewed or confirmed by the trial court,[18] concluded that res judicata barred the claim of Charles E. Williams. The conclusion, unsupported by evidence of record, is based entirely on

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[17] "Judicial estoppel is based solely on public policy which upholds the sanctity of an oath and precludes a party who has made a sworn statement, even in another litigation, from repudiating the same when he thinks it is to his advantage to do so." *Holt v. Southern Ry. Co.*, 51 F.R.D. 296, 298-299 (E.D. Tenn. 1969); *Linquist v. Quinones*, 79 F.R.D. 158, 162 (D. St. Croix 1978), and the cases cited; *Zuckerman v. McCulley*, 7 F.R.D. 739, 741 (E.D. Mo. 1947), *aff'd*, 170 F.2d 1015 (8th Cir. 1948); *United States v. 266.25 Acres of Land*, 43 F. Supp. 633, 635 (E.D. S.C. 1942).

[18] Slip op., pp. 5a-6a, and the trial court's memorandum, pp. 31a-36a, appendix, *infra*.

the fact that petitioner Charles E. Williams and the pastor were parties to a prior U.S. district court case.[19]

The difference between this case and the prior case relied on as preclusive is apparent on the face of the record filed May 21, 1990, in Appeal No. 89-422. The parties to the 2 cases are not identical; the relief demanded is different, and the basis of the relief sought is different. But neither of the courts below put the pastor and trustees to the burden of showing the elements of the res judicata defense required to be shown by *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 715 (1872), *viz.*, that the same parties to this suit were parties to the federal case; (2) that the same rights were asserted in each case; (3) that the same relief was prayed for; (4) that the relief prayed for was founded on the same facts, and (5) that the essential basis of the relief sought was precisely the same.

The court of appeals, after reciting the crucial allegations of the amended complaint, neglected to state that the allegations had been admitted in the answer or in responses to requested admissions, but proceeded to shift to the Williamses the obligation of pleading the res judicata defense to their claim. This is an egregious application amounting to the nullification of Rule 8(c).

The court of appeals then sanctioned, as reasonable, the 4-year delay in pleading the res judicata defense after the Williamses, relying on the intentional waiver of the defense, filed their motion for judgment on the pleadings. Other federal courts have rejected the plea, holding that

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[19] *Charles E. Williams v. Harold E. Trammell*, Civil Action No. 3124-70 (D. D.C.), in which the declaratory relief sought was that "the Court adjudge, as a matter of law, that the defendant is without authority to bar plaintiff from or otherwise interfere with, directly or indirectly in any manner whatsoever, the plaintiff's right of full participation as a member of the Mt. Jezreel Baptist Church," and that "defendant, by virtue of his office as pastor, is not a corporate officer of the Mt. Jezreel Baptist Church."

a 3-year delay in asserting the defense is an undue delay. *Evans v. Syracuse City School District*, 704 F.2d 44, 47 (2d Cir. 1983); *Hartman v. Wick*, 678 F. Supp. 312, 322 (D. D.C. 1988).

Finally, since conclusory findings by the special masters are "not reviewable,"[20] the trial court was obliged but failed to determine, after close scrutiny of the conclusions of law and conclusions of mixed fact and law, whether or not the masters' findings were clearly erroneous.[21] Although given conclusive effect, the reports of Special Masters Speights and Mitchell, not having been confirmed by the trial court, were indeed "without effect." *See D.M.V. Contracting Co. v. Stolz*, 158 F.2d 405, 407 (D.C. Cir. 1946), *cert. denied*, 330 U.S. 839 (1947).

This Court has condemned the wholesale reference of cases to special masters. *LaBuy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957). The reference of this case and 2 other cases proved futile when the 2 other cases referenced were finally determined prior to the filing of the masters' delinquent reports. All litigants are entitled to a "trial before a regular, experienced judge rather than before a temporary substitute appointed on an *ad hoc* basis." *Id.* at 259.

The use of masters is to aid the court in the performance of "specific" duties and "not to displace the court." *Id.* at 256. Here, the appointment of the second set of special masters, without reviewing the report of the first set of special masters, constituted a serious abuse of discretion. The first set of special masters filed a report favorable to the Williamses. The second set of masters made the significant decision that the case should be dismissed which, without careful review by the trial judge, amounts to an effective delegation of judicial authority to

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[20] *United States v. Merz*, 376 U.S. 192, 198 (1964).

[21] *Livas v. Teledyne Movible Offshore*, 607 F.2d 118, 119 (5th Cir. 1979); *Polin v. Dun & Bradstreet, Inc.*, 634 F.2d 1319, 1321 (10th Cir. 1980), and cases cited; *Levin v. Garfinkle*, 540 F. Supp. 1228, 1236-1237 (E.D. Pa. 1982); *Spencer v. Newton*, 79 F.R.D. 367, 370 (D. Mass. 1978). *See United States v. Gypsum Co.*, 333 U.S. 364, 394-395 (1948).

officials not appointed pursuant to article I of the Constitution. *See Meeropol v. Meese*, 790 F.2d 942, 961 (D.C. Cir. 1986). It follows as night the day that reliance of the courts below on the unreviewed delinquent masters' reports constitutes an egregious abuse of discretion and conflicts with the decisions of this court.[22]

II

Review by certiorari is essential to maintain uniformity in the interpretation and enforcement of the Federal Rules of Civil Procedure and the corresponding Superior Court Civil Rules as well as uniformity of decision in the District of Columbia and other federal jurisdictions.

The courts below are federal courts. Therefore, the ultimate responsibility for the sound administration of justice in the District of Columbia lies with this Court.

Rule 8(f) requires all pleadings to be construed as to do substantial justice. Accordingly, the court below requires that "the complaint must be construed in the light most favorable to the plaintiff and its allegations taken as true."[23] But the allegations of the amended complaint in this case were not so construed on the motion to dismiss. Paragraphs 1, 2, 3, 7, 10, 11, 12, 13, 14 and 15 of the amended complaint, which were neither admitted nor denied in the answer, were not deemed admitted as required by Rule 8(d). Nor did the courts below note that the responses in paragraphs 8, 9, and 13 of the answer, attacking the relevance of the allegations of the amended complaint, "cannot be deemed denials" of the statements of fact alleged in paragraphs 1, 2, 3, 7, 10-15 of the

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[22] In discussing the perceived abuses in the appointment of special masters, a staff reporter of a New York daily referred to this case in which defense counsel accused the trial judge of cronyism in the choice of masters. Hagedorn, "Special Masters Offer Judicial Relief But Experts Are Skeptical About Trend," *The Wall Street Journal*, October 1, 1988, B10.

[23] *McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C. App. 1979).

amended complaint. *Peoples Natural Gas Co. v. FPC*, 127 F. 2d 153, 156 (D.C. Cir.), *cert. denied*, 316 U.S. 700 (1942).

To enforce the rules with "an unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights," is unconstitutional. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-374 (1886).

Similarly, the determination of the standing issue is at odds with the decisions in other federal jurisdictions. Admittedly, all matters of membership rights in the church are addressed to the church, "except in cases where the civil rights of the individual are at stake or property is involved." 66 Am. Jur. 2d, *Religious Societies* § 9. Expulsion or excommunication of members is controlled by rules promulgated by the church. But "in the absence of rules on the subject, those of the common law prevail, and before a member can be expelled, notice must be given to him to answer the charge against him and an opportunity offered to make his defense, and an order of expulsion without such notice and opportunity is void."[24]

The trial court, having tentatively determined, for purposes of the receivership, that the Williams's membership had been fraudulently withdrawn, was required by due process to determine specially whether the expulsion proceedings in each instance were indeed "tainted by fraud or constituted an extreme violation of the civil rights" of the Williamses. Proceedings which are "tainted by fraud" or when church officials "act in bad faith for secular purposes may be subject to civil court inquiry in a proper proceeding."[25]

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[24] *Id.* § 12; *Taylor v. Jackson*, 50 App. D.C. 381, 273 F. 345, 348 (1921). *See Baugh v. Thomas, supra*, note 15.

[25] *First Baptist Church of Glen Este v. Ohio*, 541 F. Supp. 676, 683 (S.D. Ohio 1983).

In view of the "threat to the goal of uniformity of federal procedure,"[26] posed by the decision below which sanctions a considerable departure from the Federal Rules, the Court is called upon to remand the case with instructions to the District of Columbia Court of Appeals to perform its error-correcting function.

On the other hand, since the case involves "the enforcement" of the civil procedure rules, "which by law it is the duty of this Court to formulate and put into force," the Court may deal directly with the trial court. *See Schlagenhauf v. Holder*, 379 U.S. 104, 111-112 (1964).

III

The decision below conflicts with the decisions of this Court.

Dismissal of this case on a motion to dismiss without reaching the merits conflicts with *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 714 (1872).

In *Watson v. Jones*, plaintiff Jones filed a bill against Watson and others, as trustees of the Walnut Street Presbyterian Church in Louisville, Kentucky, alleging, inter alia, that Watson had committed a fraud on the members, and that Jones had standing to sue as an attendee and member in good and regular standing of the church. Watson answered that Jones had never been lawfully admitted to membership in the church and thus had no interest in the church's property as would sustain the right to sue. Watson alleged that Jones had brought the suit as a citizen of Indiana solely for the purpose of invoking federal diversity jurisdiction, and that prosecution of the bill was precluded by a prior state court litigation.

This Court held "that the objection" of Watson to "the interest" of Jones "must stand or fall with the decision on the merits and cannot be decided as a preliminary question." 80 U.S. at 714.

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[26] Quote from *Hanna v. Plumer*, 380 U.S. 460, 463 (1965).

In this case, the contention below that the Williamses are not lawful members of the church was based entirely on the actions of the pastor and trustees in engineering the disfellowship votes; in allowing the Williamses to remain in fellowship up until after this suit was commenced, and in thereafter barring the Williamses from public worship, "celebration of the Supper," and the corporate property of the church after this suit was instituted. Consequently, their "objection" to the Williams's "interest" in the property, for purposes of standing, "must stand or fall with the decision on the merits and cannot be decided as a preliminary question." *Id.* [27] But the court below entirely disregarded petitioners' membership status, conclusively established by the admissions on file and admissions under oath in related cases, and focused on the 1967 and 1979 expulsion resolutions which were not enforced until sometime after this suit was filed in 1982.

The Williamses should be permitted to prove that the expulsion proceedings were indeed "tainted by fraud or constituted an extreme violation" of their civil rights.[28]

IV

Review by certiorari is vital because of the practical effect of the decision below on other litigants and the consequences in other situations.

First, all litigants in the local courts of the District of Columbia are potentially affected by the construction and application of Rule 8 in issue formation, the function of Rule 36 in eliminating issues for trial, and the abuse of discretion in simply failing to determine whether a motion for judgment on the pleadings is appropriate, but deter-

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[27] *See Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 140 (1873), where this Court held that the irregular excommunication of trustees from the communing fellowship of the church did not disqualify them as trustees, and that a regular excommunication likewise would not disqualify them.

[28] *First Baptist Church of Glen Este v. Ohio, op. cit.*, note 25.

mining the issue of standing on a motion to dismiss where the issue is not joined in the pleadings during the discovery and admissions process.

Litigants are entitled to an "inexpensive" determination of their cases. The rules are designed to save them from unnecessary costs in human and financial resources in litigating relatively simple issues distilled through the discovery and admissions process. The decision below sanctions abuse of the rules.

Second, litigants in cases perceived to be "exceptional," "complex," or which involve accounting issues will be affected by the interpretation of Rule 53.

As applied, the rule allows: (1) the wholesale reference of the case to special masters; (2) the masters to recommend final disposition of the case on a ground not referenced to them; (3) the appointment of 2 special masters when the justification for the appointment of one such master is doubtful; (4) the appointment of successive special masters when the appointing court does not agree with the report of the first special master, and (5) reliance on the special master's report without reviewing and confirming the master's findings and without hearing timely objections to the report.

As applied, the rule deprived the Williamses of property without due process of law. The deprivation could have been avoided by the trial court's review of the report of the first set of special masters. Since no important issues had been raised by the answer to the amended complaint, the report, if accepted or modified, could well have eliminated the need for appointment of a second set of special masters.

When the second set of special masters failed to comply with the court's instructions to file a report in 90 days or to timely request an extension of time for compliance, failure of the trial court to act upon the motion to terminate the reference constituted a serious abuse of discretion. To thereafter grant an extension of time for filing

a report, which when filed, was not reviewed, even though objected to, constituted a gross violation of the rule and unreasonably and unnecessarily added to the costs of the litigation.

This Court should insist that litigants not be subjected to the threat of having to pay the compensation and expenses of 2 special masters in cases where the necessity for the reference to a single special master is doubtful. A reference under such circumstances amounts to a reprehensible abuse of discretion.

Third, the decision below effectively forecloses the opportunity of members to hold unscrupulous officers to account; eschews the rule of uniformity of decision; creates uncertainty, and sanctions inconsistent treatment of litigants who are members of religious societies and other voluntary associations operating in the District of Columbia.

Petitioner Lorraine A. Williams, for example, is one of the group of members from whom the hand of fellowship was withdrawn by vote taken on February 23, 1979. Some of the group sued for relief as the *Mt. Jezreel Christians Without a Home*, *supra*, note 3. The court below remanded their case to the Superior Court for a redetermination of the issue of standing to sue. But the court, in affirming dismissal of this suit, failed to articulate a reason for the difference in treatment of Lorraine A. Williams and the Mt. Jezreel Christians who were disciplined by the church with her.

Finally, this case was before the courts below "in the same attitude as other voluntary associations for benevolent or charitable purposes." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 714 (1872). But the courts below failed to articulate a reason for the different treatment accorded the Williamses from that accorded to the plaintiffs in *YMCA v. Covington*, *op. cit.*, note 5, *supra*.

CONCLUSION AND PRAYER FOR RELIEF

The courts below have significantly misinterpreted the Superior Court Civil Rules and corresponding Federal

Rules of Civil Procedure. If unreviewed, the decision below will encourage delay and increased litigation on procedural issues, thus interfering with the sound administration of justice in the District of Columbia.

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted; that the Court should vacate the judgment below and remand the cause for further proceedings on the merits, or for reconsideration in light of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), and *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957), and that the Court should grant such other and further relief as may be deemed just.

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July, 1991

APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 89-422 & 89-577

CHARLES E. WILLIAMS, *et al.*, APPELLANTS,

v.

BOARD OF TRUSTEES OF MOUNT JEZREEL BAPTIST CHURCH, *et al.*, APPELLEES.

Appeals from the Superior Court of the District of Columbia

(Hon. William S. Thompson, Trial Judge)

(Argued February 13, 1991 Decided April 18, 1991)

Charles E. Williams for appellants.

Darrel S. Parker, with whom *Dovey J. Roundtree* was on the brief, for appellees.

Before FERREN, BELSON, and TERRY, *Associate Judges*.

FERREN, *Associate Judge*: On March 24, 1989, after several conferences with the parties, a Masters' Report, and an evidentiary hearing, the trial court dismissed appellants' suit—filed in 1982—against the Board of Trustees and Pastor of Mount Jezreel Baptist Church to prevent the sale of church property. The court ruled that appellants lacked standing to sue because they had been validly expelled from church membership. The court also imposed Rule 11 sanctions against appellant-attorney Charles E. Williams for

filing a "spurious claim." Appellants—Mr. Williams and his wife, Lorraine A. Williams—contend the trial court erred: (1) in concluding that the doctrine of claim preclusion (*res judicata*) barred Charles Williams from asserting his standing to sue; (2) in failing to apply the law-of-the-case doctrine to sustain Charles Williams' standing to sue, regardless of any claim preclusion bar; (3) in denying the Williamses' alternative contention that participation in the church's "corporate body," if not in the church's "membership," entitled them as "trust beneficiaries" to sue the Board of Trustees for disposing of church property in a manner contrary to the purposes of the trust; and (4) in imposing an unjustifiable Rule 11 sanction.[1] Because the trial court's findings of fact and conclusions of law that the Williamses lacked standing are sustainable on this record, we affirm the order dismissing the lawsuit.[2] Because we are unable to discern from the record how the trial court exercised its discretion in imposing Rule 11 sanctions, however, we

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[1] The Williamses also argue that appellees "waived" or "admitted" certain claims in their answer to the amended complaint. These arguments have no merit. Super. Ct. Civ. R. 15 (b) permits amendment of pleadings to conform to the evidence "even after judgment; but failure so to amend does not affect the result of the trial on these issues." *Id.* Rule 15 was drafted to "ensure that litigation be decided upon the merits rather than upon technical pleading rules." *International Tours & Travel, Inc. v. Khalil,* 491 A.2d 1149, 1152 (D.C. 1985). We therefore look to the trial record, as well as to the trial court's rulings, not only to the pleadings.

[2] The Williamses argue, in addition, that the trial court erred (1) in approving compensation for the receiver appointed by the court in 1986 to oversee church assets and (2) in terminating the receiver without a hearing and a full accounting. Because we conclude that the Williamses lacked standing to bring this suit, we do not reach these claims.

remand the case for further findings (after a hearing, or not, in the court's discretion) as to whether sanctions are warranted and, if so, in what amount and how calculated.

I.

On January 20, 1982, the Williamses filed suit in Superior Court seeking a declaratory judgment that D.C. Code §§ 29-901 to -916 (1981) and the charter of the Mount Jezreel Baptist Church precluded the pastor and the board of trustees from selling the church's historic sanctuary building at Fifth and E Streets, S.E., without a vote of the members to amend the church's charter.

In their amended complaint filed February 27, 1984, appellants based their standing to sue on the fact that "[e]ach is an attendant and regular contributor and thus a member of the corporate body of the Mt. Jezreel Baptist Church." The amended complaint said:

> 4. Under the rules or discipline of the Mt. Jezreel Baptist Church, as well as [D.C. Code §§ 29-901 to -916 (1981)], the congregation consists of two official bodies, *viz.*, the *church* (ecclesia) or communing fellowship and the *society* or corporate body. The pastor and deacons administer the ecclesiastical affairs and the defendant board of trustees is authorized by the law to manage the corporate estate "in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong. . . D.C. Code § 29-904."[3]

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[3] D.C. Code § 29-904 (1981) states that "rules and regulations may be adopted in relation to the management of the estate . . . in accord-

> 8. HISCOX, THE NEW DIRECTORY FOR BAPTIST CHURCHES and ROBERT'S RULES OF ORDER form the basis of the rules or discipline of the Mt. Jezreel Baptist Church. . . .
>
> 9. Hiscox states, at page 117, that the congregation or "corporate body is a *society* composed of all attendants who are regular contributors whether members of the Church or not" . . . .
>
> WHEREFORE, the plaintiffs demand that the Court adjudge:
>
> (1) That plaintiffs are members of the corporate body of the Mt. Jezreel Baptist Church and thus have standing to maintain this suit. . . .

(emphasis in original). In the amended complaint, however, the Williamses did not advert to their earlier expulsions from church membership—the withdrawal of the "right hand of fellowship"—which in Charles Williams' case had been accompanied by six years of litigation in federal court. Appellees—the board of trustees and the pastor—answered by characterizing the amended complaint as "an attempt to relitigate matters previously litigated" and by charging appellants with "set[ting] themselves forth as 'corporate

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ance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District." Because the record does not show whether the Mount Jezreel Baptist Church adopted rules or regulations for management or disposition of church property, we have no document to review for conformity with the rules or discipline of the Church.

members' of the church, without setting forth any criteria or classification of such membership."[4]

When eight status and settlement conferences failed to produce an agreement, the trial judge appointed two Special Masters on November 15, 1985, to determine (among other things) whether the Williamses had standing to conduct their lawsuit and whether they had been "expelled from membership in accordance with the rules and discipline of the Mt. Jezreel Baptist Church." The Masters' report of February 8, 1988 concluded that both Williamses lacked standing because each had been validly expelled from church membership.[5] The Masters found that the Williamses'

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[4] Shortly after the Williamses filed their amended complaint, a group calling themselves "Mount Jezreel Christians Without a Home" filed suit against the Church's Board of Trustees and pastor alleging the Board and pastor had breached their fiduciary duty by threatening to close the doors of the historic church building. In view of the common issues of fact and law, the two cases were consolidated on November 6, 1985. The trial court, however, disposed of each case by separate order. Consequently, each case has been the subject of a separate appeal to this court. *See Mount Jezreel Christians Without a Home v. Board of Trustees of Mount Jezreel Baptist Church*, 582 A.2d 237 (D.C. 1990).

[5] The Masters' Report carefully documented the 1970 civil litigation in federal court, No. 3124-70, which had as its core issue the validity of Charles Williams' 1967 expulsion from the Mount Jezreel Baptist Church. See *infra* note 7. After six years of litigation, the case was dismissed with prejudice on March 15, 1976, after Charles Williams signed a praecipe agreeing to be bound by the decision of a special panel of five Baptist ministers. The court submitted to the panel the question: "Whether Charles E. Williams should be reinstated to full membership in the Mt. Jezreel Baptist Church, Washington, D.C." The court's order stated "the panel's decision will be final and binding upon all parties without right of appeal." That panel voted unanimously not to

regular attendance and financial contributions – which they claimed made them "corporate" members – were not sufficient to confer standing to sue. Appellants objected to the report, claiming their expulsions from the church had been fraudulent. Charles Williams specifically denied the report's finding that he had agreed to be bound by the 1976 decision of the special panel of Baptist ministers which had resolved the membership issue against him as part of the settlement of his federal court lawsuit. See *supra* note 5. Appellees moved to dismiss the amended complaint. The Williamses opposed the motion, restating their claim to corporate memberships and challenging the church to produce evidence that they had been expelled "from the corporate body."

After an evidentiary hearing involving several witnesses, including a minister appointed by the federal district court to the 1976 panel, see *supra* note 5, and the church secretary who took the minutes of the 1979 church conference which expelled Lorraine Williams, the trial court granted appellees' motion and dismissed the amended complaint with prejudice. The court found:

> 1. That Charles E. Williams an attorney, is the same Charles E. Williams named plaintiff in Civil Action No. 3124-70, in the United States District Court of the District of Columbia.

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reinstate Charles Williams to full membership in the Mount Jezreel Baptist Church.

The Masters' Report also concluded that Lorraine Williams had been validly expelled from Mount Jezreel Baptist Church at a church conference in 1979.

> 2. That this suit was brought to challenge the action of the Mt. Jezreel Baptist Church in withdrawing the Right Hand of Fellowship from Charles E. Williams. . . .
>
> 4. That following the remand of this case, both parties did consent and endorse an Order, wherein a panel of five Baptist Ministers were designated to review the action of the Church in withdrawing the Right Hand of Fellowship from Charles E. Williams, plaintiff. . . .
>
> 10. That this plaintiff, a seasoned lawyer, knew or should have known the history of this membership dispute and in particular that he signed and consented to be bound by the recommendations of the Panel of Ministers, before whom he appeared and gave testimony. That he had signed a Praecipe dismissing the case No. 3124-70 wherein the issue centered about his membership status.

The court also found that the "Right Hand of Fellowship" had been withdrawn from Lorraine Williams by a majority vote of approximately 100 members at a regularly called church conference held on February 23, 1979. The court noted that Lorraine Williams had been present and made no comment or objection at the conference and that she had taken no appeal from that action.

The court concluded as a matter of law:

> 2. That the Court having heard the testimony, reviewed the documentary evidence, in particular the case of C.A. No. 3124-70, . . . and the Report and Recommendations of the Special Masters. . .

concludes that the action of the Mt. Jezreel Baptist Church in withdrawing the Right Hand of Fellowship from both plaintiffs', herein, was proper and valid.

3. That as to Charles E. Williams, the prior determination of his membership in Mt. Jezreel Baptist Church is precluded by the determinations, to which he consented in the United States District Court for the District of Columbia.

[4]. That these plaintiffs not being members of Mt. Jezreel Baptist Church at the time of the filing of this suit, lack standing to maintain this cause of action.

II.

Under the doctrine of claim preclusion (*res judicata*), a valid final judgment on the merits absolutely bars the same parties from relitigating the same claim in a subsequent proceeding. *See Washington Medical Center, Inc. v. Holle*, 573 A.2d 1269, 1280-81 (D.C. 1990); *Henderson v. Snider Bros., Inc.*, 439 A.2d 481, 485 (D.C. 1981) (en banc). A final judgment on the merits "embodies all of a party's rights arising out of the transaction involved, and a party will be foreclosed from later seeking relief on the basis of issues which might have been raised in the prior action." *Stutsman v. Kaiser Found. Health Plan*, 546 A.2d 367, 370 (D.C. 1988). This doctrine also applies to judgments "entered by consent, compromise or agreement of the parties." *Universal C.I.T. Credit Corp. v. Gogos*, 184 A.2d 197, 198 (D.C. 1962).

Charles Williams challenges the validity and finality of the federal court judgment which resolved against him his

claim of membership in the Mount Jezreel Baptist Church.[6] See *supra* note 5. His effort here must fail. Any attack on that judgment had to be raised in a direct appeal. None was filed, of course, because Williams agreed to settle the litigation by consenting to be bound by the panel of ministers' decision, and he waived his right of appeal. See *supra* note 5. Williams cannot change his mind now.

III.

Charles Williams next argues that although *res judicata* might otherwise preclude his claim to standing, an earlier trial court ruling in this case which in effect granted him standing has become the law of the case. Accordingly, he says, for purposes of this suit he is a member of the church.

On June 3, 1986, the trial court appointed a temporary receiver to oversee church assets based on a showing by the Williamses and the *Christians Without a Home* plaintiffs, see *supra* note 4, that Mount Jezreel Baptist Church was insolvent and probably the victim of fraudulent conduct. In its findings of fact at that time, the trial court stated:

> 20. The Court finds that defendants [the Board of Trustees and pastor of Mt. Jezreel Baptist Church] caused the congregation to vote to withdraw the membership from plaintiff Charles E. Williams, allegedly in violation of the stipula-

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[6] The federal court order and praecipe dismissing the case with prejudice were clearly a judgment on the merits. Fed. R. Civ. P. 41 (b) provides: "Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

> tion filed in Civil Action No. 3346-66, United States District Court for the District of Columbia, on February 27, 1967[.][7]

On appeal, this court summarily approved appointment of the receiver. Appellant now argues that this factual finding—that membership was fraudulently withdrawn from Charles Williams — became the law of the case and thus barred the trial court from reconsidering and rejecting Williams' standing based on church membership.

The law of the case doctrine "bars a trial court from reconsidering the same question of law that was submitted to and adjudicated by another court of coordinate jurisdiction." *Weinberg v. Johnson*, 518 A.2d 985, 987 (D.C. 1986). "This serves the judicial system's need to dispose of cases efficiently by discouraging 'judge-shopping' and multiple attempts to prevail on a single question." *Tompkins v. Washington Hospital Center*, 433 A.2d 1093, 1098 (D.C. 1981) (quoting *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980)). We have never dealt with the question whether law-of-the-case doctrine applies as clearly to a case in which a single judge has presided over multiple stages of the same litigation as it does to a case in which several judges have ruled. Obviously, the judge-shopping concern

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[7] On May 1, 1966, the right hand of fellowship was extended to Charles Williams. Soon thereafter, on December 21, 1966, Williams filed suit in federal court (Civil Action No. 3346-66) challenging the election of church officers. That suit was dismissed with prejudice after the parties signed a stipulation agreement on February 27, 1967 which provided that "4. The institution of this suit shall not constitute grounds for disciplinary action against any members of the Mt. Jezreel Baptist Church." However, on March 12, 1967, the congregation voted to withdraw fellowship from Charles Williams. This vote formed the basis of Charles Williams' 1970 federal suit (Civil Action No. 3124-70). See *supra* note 5.

is inapplicable to the single judge situation, but law-of-the-case doctrine still has force in that situation because, irrespective of how many judges have participated, the "efficient disposition of the case demands that each stage of the litigation build on the last, and not afford an opportunity to reargue every previous ruling." 1B MOORE'S FEDERAL PRACTICE ¶ 0.404[1] (1988).

In this case, where only one judge has ruled, we need not resolve the single judge/multiple judge issue because, in any event, the law-of-the-case doctrine only applies if the first ruling is "sufficiently final" and is not "clearly erroneous in light of newly presented facts or a change in substantive law." *Weinberg*, 518 A.2d at 987 (citations and internal quotation marks omitted); *see Schroeder v. Weinstein*, No. 89-779, slip. op. at 3 (D.C. Feb. 12, 1991). In this case, the issue of Charles Williams' membership was not finalized by interim trial court findings. Rather, the trial court clearly had reserved final judgment on Williams' standing when, only a few months earlier in November 1985, it had appointed two Special Masters to issue findings regarding Williams' church membership. At the time of its June 1986 ruling, the trial court had not yet received the Masters' report.[8]

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[8] In his Supplemental Memorandum of Points, filed post-argument on February 19, 1991, appellant contends that by 1986 the trial court had received a report from another set of Masters appointed in 1983. This report, according to appellant, concluded that the Williamses had standing to maintain this suit based on a review of the prior federal litigation. Williams, however, failed to supply us with a copy of this report or with any transcripts from which we can determine the accuracy of his statement. We therefore cannot consider his argument. "Unless the record that [the appellant] brings before the court of appeals

In any event, the law of the case doctrine does not apply when "newly presented facts" reveal that the prior ruling was clearly erroneous. *Weinberg*, 518 A.2d at 987. Thus, the doctrine "does not preclude [a court from] correct[ing] an error." 1B MOORE'S FEDERAL PRACTICE at ¶ 0.404[1]. Clearly, the trial court had the power to revise its finding of fraudulent membership withdrawal once the Masters' Report and an evidentiary hearing set forth – for the first time – the facts of the prior, protracted federal court litigation. These facts suggested not only that the trial court's earlier findings were "clearly erroneous in light of newly presented facts," *Weinberg*, 518 A.2d at 987 – *i.e.*, Williams was not defrauded of his membership in violation of a court stipulation; rather, he agreed to be bound by the decision of a panel of ministers – but also that the trial court's earlier findings of fraud were legally barred by the doctrine of *res judicata*.

IV.

As an alternative ground for establishing their standing, both Williamses argue that they remained members of the church's corporate body, despite their expulsion from church membership.[9] Several months ago, this court

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affirmatively shows the occurrence of the matters upon which he relies for relief, he may not urge those matters on appeal." 9 J. MOORE, B. WARD & J. LUCAS, MOORE'S FEDERAL PRACTICE ¶ 210.05[1], at 10-23 (2d ed. 1987); *see Jonathan Woodner Co. v. Adams*, 534 A.2d 292, 294 & n.2 (D.C. 1987) ("Appellant bears the burden of perfecting the appellate record and may not shift that responsibility to this court."); D.C. App. R. 10 (a)(1).

[9] Generally, expelled members "whose names have been expunged from the church membership roll by the valid action of the church,

answered the question whether church members may file suit against the board of trustees of their church on the theory that members are "trust beneficiaries." *See Mount Jezreel Christians Without a Home v. Board of Trustees of Mount Jezreel Baptist Church*, 582 A.2d 237, 239 (D.C. 1990); *supra* note 4. We held that "as a general principle, bona fide members of a church have standing to bring suit as trust beneficiaries when there is a dispute over the use or disposition of church property." *Id.* In that case, we concluded that several of the appellants were bona fide members because the church membership roll and financial records revealed that they were members in good standing and that the chairman of the church's board of trustees testified the "right hand of fellowship" had not been withdrawn from those appellants. *Id.* at 240-41.

In this case, the Williamses ask us to extend the definition of "bona fide member" to include persons who are not listed in the church's membership roll or financial records, and who in fact have been expelled from "the Right Hand of Fellowship," but who regularly attend the church and give financial contributions. According to the Williamses, these persons are properly considered to be "corporate members." The Williamses cite E. HISCOX, PRINCIPLES AND PRACTICES FOR BAPTIST CHURCHES (1985) to support their argument that the congregation is composed of all attendants who are regular contributors (corporate members), regardless of whether the right hand of fellowship has been extended to them (church members).

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cannot stand for and represent members of the church in an action to prevent the diversion of church property from its lawful uses." 66 AM. JUR. 2D *Religious Societies* § 12 (1973); *see Stewart v. Jarriel*, 206 Ga. 855, ____, 59 S.E.2d 368, 370 (1950).

The First Amendment forbids a civil court from becoming "entangled in matters of a highly religious nature, issues at the core of internal church discipline, faith and church organization." *United Methodist Church v. White*, 571 A.2d 790, 795 (D.C. 1990). On the other hand, "in limited circumstances . . . the church is not above the law," *id.*, and the courts accordingly apply "neutral principles of law," such as rules of statutory construction, to resolve church property disputes by reference to the applicable civil statutes. *See Jones v. Wolf*, 443 U.S. 595, 600 (1979). We turn to that inquiry.[10]

Generally, the membership of a religious society is determined "by reference to the statutes governing such bodies"

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[10] We emphasize that this is not a case where the Williamses were expelled from membership to foreclose their bringing this lawsuit; their expulsions occurred many years before they filed their first complaint. Nor do we review whether the Williamses' expulsions conformed with the rules and discipline of the church, or whether their expulsions were tainted by fraud or collusion. The validity of Charles Williams' expulsion was settled in federal court. See *supra* Part II. Lorraine Williams' expulsion, see *supra* note 5, is not questioned in this appeal. Accordingly, we need not decide the extent to which the First Amendment permits a civil court to adjudicate the propriety of a dissident member's expulsion from a congregational church. *Compare Nunn v. Black*, 506 F. Supp. 444 (W.D. Va.), *aff'd*, 661 F.2d 925 (4th Cir. 1981), *cert. denied*, 454 U.S. 1146 (1982) (First Amendment prohibits judicial resolution of whether church members' expulsion was in accordance with church expulsion procedures) *with First Baptist Church of Glen Este v. Ohio*, 591 F. Supp. 676, 683 (S.D. Ohio 1983) (internal church disciplinary proceedings tainted by fraud or collusion may be subject of civil court inquiry). *See generally* Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 CALIF. L. REV. 1380 (1981).

and "the rules, constitution, or by-laws of the society." 76 C.J.S. *Religious Societies* § 11 (1952). In this jurisdiction, the incorporation of religious societies is governed by D.C. Code §§ 29-901 to -916 (1981). We find nothing in the Code that confers legal rights on two subsets of church membership. The Code refers only to one membership and to the board of trustees, and it speaks only of the rights of "members of [the] society or congregation," *id.* § 29-901, not the rights of the "corporate" body or "attendants who are regular contributors." Nor can we find support for the concept of "corporate" as distinct from "society" or "congregation" membership in the edition of the D.C. Code that governed the original incorporation of the Church in 1883. *See* Rev. Stat. D.C. § 533-41 (1875).

The Williamses have proffered no church articles of incorporation, by-laws, or rules and regulations adopted pursuant to the D.C. Code, see *supra* note 3, that incorporate church rules or discipline in a way that make them cognizable under civil law. In view of governing caselaw, therefore, *see Jones*, 443 U.S. 595; *White*, 571 A.2d 790, we cannot properly go outside the constraints of local statutes to find and apply definitions of membership in the Baptist Church—for example, definitions found in HISCOX—that would involve us in construing complex doctrinal glosses on the concept of church membership.[11]

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[11] Appellees point out that, even if this court were to try to interpret and apply HISCOX, we would not find that the language cited by appellants provides support for their case. Appellants rely on the following passage:

> The laws for the incorporation of religious societies differ in the different States. In some the Church itself can become

Finally, given traditional notions of standing to sue, we do not believe regular church attendance and financial contributions comprise a sufficient basis for granting an individual a "special interest" in the enforcement of a charitable trust. *See Hooker v. Edes Home*, 579 A.2d 608, 611 (D.C. 1990). Under such a definition, the class of beneficiaries would be uncertain and limitless. *Id.* at 614. The problem of subjecting the official trustees to recurring

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> an incorporated body, and thus control and administer its temporal affairs as it does the spiritual, without interference by any persons not Church members. This is right, and, according to the independent theory of Baptist Church government, they ought everywhere to be able to do this. In other States the corporate body is a *society* composed of all attendants who are regular contributors, whether members of the Church or not. This admits persons not Christians to participation in the management of Church affairs. Though usually no harm arises, yet harm is always liable to arise and the theory is wrong.

E. HISCOX, PRINCIPLES AND PRACTICES FOR BAPTIST CHURCHES 117 n.1 (1985) (emphasis in original). Appellees stress that, rather than supporting the concept of corporate membership based solely on attendance and financial contribution, HISCOX disapproves of the concept even though some state laws apparently embrace it. *See* Annotation, *Suspension or expulsion from church or religious society and the remedies therefor*, 20 A.L.R. 2d 421, 433-35 (1951) (discussing implications of state incorporation laws which vest corporate powers in officers who need not be church members.)

Furthermore, appellees point out that, although we need not adopt the 1988 Masters' Report's reliance on HISCOX, it is interesting to note the Masters found that attendance and financial contributions did not confer standing to sue because, according to another section of HISCOX, "[p]ersons not members enjoy the privilege of worship with the church, *but can claim no corporate rights*." HISCOX at 79 n.14 (emphasis in report).

vexatious litigation would be exacerbated. Without some additional indicia of "special interest"—such as enrollment on the membership list as we found in *Christians Without a Home*—we decline to extend standing to a highly generalized "corporate membership" distinguished only by its attendance and financial contributions. The Williamses' final argument for standing accordingly fails.

V.

Appellants argue the Rule 11 sanction must be vacated for three reasons: the trial court failed to articulate how the Williamses' claim was "spurious," failed to hold a hearing, and set the amount of the sanction unreasonably high. Under Super. Ct. Civ. R. 11, the signature of an attorney on every pleading, motion, or other paper constitutes a certification that

> to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

A trial court decision to impose a Rule 11 sanction is a two-part process. First, the court must decide whether a Rule 11 violation occurred. If it did, the court must impose a sanction. *See Montgomery v. Jimmy's Tire & Auto Center, Inc.*, 566 A.2d 1025, 1028-29 (D.C. 1989). In deciding whether Rule 11 has been violated, the trial court focuses only on whether "reasonable pre-filing inquiry would have disclosed that the pleading, motion, or paper was not well grounded in fact, was not warranted by existing law, or was interposed for an improper purpose." *Kleiman v. Aetna Casualty & Sur. Co.*, 581 A.2d 1263, 1266 (D.C. 1990) (citations omitted). Rule 11 does not apply to oral representations or to the actions of counsel before and during trial. *Id.*

A trial court's decision as to whether a pleading "is well grounded in fact," is not "warranted by existing law or a good-faith argument" for changing the law, or is interposed for an "improper purpose" is subject to review for abuse of discretion. *See Cooter & Gell v. Hartmarx Corp.*, 110 S. Ct. 2447, 2461 (1990).[12]

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[12] Because the Superior Court rule is virtually identical to Fed. R. Civ. P. 11, we consider the federal cases on Rule 11 as "persuasive authority." *Stansel v. American Sec. Bank*, 547 A.2d 990 n.8 (D.C. 1988) (citation omitted), *cert. denied*, 490 U.S. 1021 (1989). In *Montgomery*, 566 A.2d at 1029, we noted that in *Stansel* we had adopted the Rule 11 analysis of the United States Court of Appeals for the District of Columbia Circuit in *Westmoreland v. CBS, Inc.*, 248 U.S. App. D.C. 255, 261-62, 770 F.2d 1168, 1174-5 (1985). We further noted in *Montgomery*, 566 A.2d at 1029, that the *Westmoreland* court, and thus this court, followed the approach of the federal circuits that use abuse-of-discretion standard to review a decision whether a pleading "is well grounded in fact" or reflects an "improper purpose," but applied de novo review to decide whether the pleading is "warranted by

In this case, the trial court issued a one-sentence order, imposing a Rule 11 sanction on appellant Charles Williams for filing a "spurious claim with full knowledge of the total history of membership." The order does not make clear whether the court imposed the sanction because Williams, as attorney, did not undertake the proper pre-filing factual inquiry, had an improper purpose, or made an unwarranted legal argument.[13] We are aware that our caselaw defining the legal prerequisites for maintaining a suit against a charitable trust is complex and recently developed. *See Christians Without a Home*, 582 A.2d 237; *Hooker*, 579 A.2d 608. Moreover, the interplay between the property rights of minority factions in religious congregations and the First Amendment has troubled even the Supreme Court. *See Jones*, 443 U.S. at 597-602 ("The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively"); Note, *Church Property Dispute Resolution: An Expanded*

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existing law or a good-faith argument" for changing the law. Because of *Cooter & Gell*, calling for abuse-of-discretion review for all three Rule 11 criteria, the law of the D.C. Circuit developed in *Westmoreland* has been modified. For consistency in the law of both court systems in this jurisdiction, we hereby change our *Montgomery/Westmoreland* interpretation of Super. Ct. Civ. R. 11 to the uniform abuse-of-discretion standard of review announced for the federal courts in *Cooter & Gell*.

[13] "Spurious" is a word with various meanings and can be defined as "faulty in reasoning or conclusion" or as "of deceitful or fictitious nature or quality." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2212 (1966). One definition would imply that Williams was incorrect on the law; the other would suggest he had an improper purpose. We cannot tell from this record which meaning the trial court meant to convey.

Role for Courts After Jones v. Wolf?, 68 GEO. L.J. 1141 (1980). Charles Williams attempted to base one of his standing arguments on a novel theory of corporate membership—a theory we reject in this opinion but not a wholly unwarranted theory, given the sparse caselaw on this issue when the amended complaint was filed in 1984. Williams' arguments in his pleadings and motions were challenging, causing the trial court to call for two Special Masters' reports and resulting in the appointment of a temporary receiver to oversee church assets. On the record before us, we cannot conclude as a matter of law that Williams' standing argument did not propose a good faith extension of the law.

On the other hand, even a legitimate legal argument can be premised on carelessly developed facts and advanced for an improper purpose. Rule 11 accordingly requires the court to balance the potential "chill" on innovative theories of law against the need to discourage frivolous or dilatory litigation which drives up the opposing party's expenses and otherwise causes prejudice. *See Cooter & Gell*, 110 S. Ct. at 2454; *Montgomery*, 566 A.2d at 1030; *In re Kunstler*, 914 F.2d 505, 524 (4th Cir. 1990). Because the trial court's order imposing sanctions was ambiguous in its intent, see *supra* note 13, we must remand the case for further explanation of the Rule 11 order.

Appellant argues that he is entitled to a hearing on Rule 11 sanctions. We cannot say as a matter of law that he is. "While Rule 11 procedures must comport with due process, a hearing is not required in every case." *Montgomery*, 566 A.2d at 1031. The Advisory Committee Note to Rule 11 has suggested that the type and severity of the sanction must

influence the amount of process due. *See* Fed. R. Civ. P. 11, Advisory Committee Note, 97 F.R.D. 165, 201 (1983); *Kunstler*, 914 F.2d at 521-22. In this case, the judge who imposed Rule 11 sanctions participated in every aspect of these proceedings. Under these circumstances, the trial judge is uniquely in a position to decide whether a hearing is necessary; on remand, we leave that judgment to his discretion. *See* Advisory Committee Note, 97 F.R.D. at 201.

Finally, we turn to the amount of the sanction: ten percent of appellees' costs and attorneys' fees. Rule 11 requires that the sanction be "appropriate" and that costs and attorneys' fees be "reasonable." We review for abuse of discretion. *See Montgomery*, 566 A.2d at 1029.

"[T]he central purpose of Rule 11 is to deter baseless filing . . . and thus . . . streamline the administration and procedure of the . . . courts." *Cooter & Gell*, 110 S. Ct. at 2454. The amount of the sanction, therefore, should reflect this primary purpose – deterrence – although the courts have also said that, in fairness, the amount should be the least severe sanction adequate to serve that purpose. *See Kunstler*, 914 F.2d at 522-23; *White v. General Motors*, 908 F.2d 675, 683-84 (10th Cir. 1990).

In imposing a monetary sanction, the trial court should expressly consider at least four factors, all of which serve to limit the amount assessed: (1) the reasonableness of the injured party's attorneys' fees, including that party's "duty to mitigate costs by not overstaffing, overresearching or overdiscovering clearly meritless claims," *Kunstler*, 914 F.2d at 523 (quoting *White*, 908 F.2d at 684); (2) the minimum amount that "will serve to adequately deter the undesirable

behavior," *id.* at 524 (quoting *White*, 908 F.2d at 684-85); (3) the offending party's ability to pay, bearing in mind that sanctions should not be so large as to bankrupt the offending party, drive that party from the practice of law, or otherwise cause the offending party great financial distress, *see id.*; and (4) "the offending party's history, experience, and ability, the severity of the violation, the degree to which malice or bad faith contributed to the violation, the risk of chilling the type of litigation involved, and other factors as deemed appropriate in individual circumstances." *Id.* at 524-25.

In order to conduct its inquiry into these factors, the court should allow the offending party to supplement the record and to submit evidence of financial status, with the burden on that party to produce evidence of the impact of the sanction. *See id.* at 524; *White*, 908 F.2d at 685. And, if the amount of sanction is likely to be large, "the court should permit the sanctioned party to examine and contest the injured party's fee statements as an aid to the court's own independent analysis of the reasonableness of the claimed fees." *Kunstler*, 914 F.2d at 524.

Here, the trial court's imposition of a ten percent award against an individual *pro se* plaintiff based on appellees' costs and attorney fees over seven years of litigation is potentially harsh. The sanction apparently was not based on careful consideration of appellees' costs and fees after a review of documented expenditures, hours of attorney time, reasonableness of rates charged, and necessity of the work performed.[14] *See Montgomery*, 566 A.2d at 1030; *Williams v. Ray*, 563 A.2d 1077, 1080 (D.C. 1989). Nor did the

[14] Rule 11 permits "an award only of those expenses directly caused by the [offending] filing." *Cooter & Gell*, 110 S. Ct. at 2461.

court consider the minimum amount of a sanction necessary to deter future frivolous suits of the type involved here or evaluate the Williamses' ability to pay. Absent specific findings of this sort, we cannot review the court's order for abuse of discretion. *See Montgomery*, 566 A.2d at 1030.

Accordingly, we affirm the order dismissing appellant's complaint for lack of standing, but we reverse and remand the Rule 11 order to the trial court for fuller explanation of whether Rule 11 sanctions are warranted. If sanctions are warranted, the trial court should refer to the papers signed by Williams that violated the rule, explain why the rule was violated, and demonstrate how the sanction is calculated giving consideration to the factors which determine the reasonableness of the fee. *See id.* at 1032.

Affirmed in part; reversed in part and remanded.

District of Columbia
Court of Appeals

Nos. 89-422 & 89-577

CHARLES E. WILLIAMS, et al.,

Appellants,

v.

CA 12510-82

BOARD OF TRUSTEES OF MOUNT JEZREEL BAPTIST CHURCH, et al.,

Appellees.

On Appeal from the Superior Court of the District of Columbia Civil Division

BEFORE: Ferren, Belson and Terry, Associate Judges

JUDGMENT

On consideration of the transcript of record, the briefs filed, the argument presented, appellants' motion for leave to file post-argument supplemental memorandum of points and the opposition thereto, it is now hereby

ORDERED that the motion for leave to file post-argument supplemental memorandum of points is granted. It is

FURTHER ORDERED and ADJUDGED that the trial court judgment is affirmed in part and reversed in part and this cause is remanded for further proceedings as set forth in the opinion filed this date.

For the Court

R B Hoffman

Richard B. Hoffman
Clerk

Dated: April 18, 1991.

Opinion per Associate Judge John M. Ferren.

mj

District of Columbia
Court of Appeals

Nos. 89-422 & 89-577

CHARLES E. WILLIAMS, ET AL.,

Appellants,

v.

CA 12510-82

BOARD OF TEUSTEES OF THE
MT. JEZREEL BAPTIST CHURCH,
ET AL.,

Appellees.

BEFORE: Ferren, Belson, and Terry,
Associate Judges.

O R D E R

On consideration of appellants' petition for rehearing, it is

ORDERED that the petition for rehearing is denied.

PER CURIAM

Copies to:

Honorable William S. Thompson

Clerk, Superior Court

Mr. Charles E. Williams
1329 Shepherd Street, N.W.
Washington, D.C. 20011-5529

Darrel S. Parker, Esquire
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1822 - 11th Street, N.W.
Washington, D.C. 20001

sl

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

HAROLD E. TRAMMELL, et al., Plaintiffs,	)	
v.	)	Civil Action No. 17916-81
LORRAINE A. WILLIAMS, et vir., Defendants.	)	
CHARLES E. WILLIAMS, et ux., Plaintiffs,	)	
v.	)	Civil Action No. 12510-82
BOARD OF TRUSTEES, et al., Defendants.	)	
CHARLES E. WILLIAMS, Plaintiff,	)	
v.	)	Civil Action No. 15395-82
BLAINE P. FRIEDLANDER, et al., Defendants.	)	

ORDER APPOINTING SPECIAL MASTERS

The Court having held several status and settlement conferences with the parties and counsel for almost one year, having noted that the complexity of the issues in these consolidated cases is such that the Court deems it advisable to appoint two Special Masters in these consolidated cases, and having fully considered the memoranda submitted by the parties and having discussed all issues in these cases; it is by the Court hereby

ORDERED that these actions shall be, and the same are hereby, referred to

Melvin Washington, Esq.
1100 6th Street, N.W.
Washington, D.C. 20001
(289-0800)

Amy Goldson, Esq.
4015 28th Place, N.W.
Washington, D.C. 20008
(362-0990)

as of December 16, 1983, as Special Masters of the Court pursuant to Superior Court Rule 53 to supervise and regulate discovery, to hear the parties and the evidence, to file any necessary memoranda or pleadings that they may deem appropriate and to report to this Court their findings of fact and conclusions of law together with such parts of the evidence as each party may request in writing.

These appointments are made pursuant to Superior Court Civil Rule 53.

This the 16th day of December, 1983.

/s/ William S. Thompson
JUDGE WILLIAM S. THOMPSON

December 16, 1983
Copies mailed to:

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Honorable H. Carl Moultrie I
Chief Judge

Honorable John F. Doyle
Associate Judge, Room 2600

Mr. Joseph West
Civil Assignment Commissioner
Room 1120

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

F I L E D
MAR 24 1989

CHARLES E. WILLIAMS and LORRAINE A. WILLIAMS	*	
Plaintiffs	*	
vs.	*	Civil Action No. 12510-82
BOARD OF TRUSTEES OF THE MT. JEZREEL BAPTIST CHURCH	*	
Defendants	*	

ORDER DISMISSING CIVIL ACTION NO. 12510-82 AS TO BOTH PLAINTIFFS CHARLES E. WILLIAMS AND DR. LORRAINE WILLIAMS

This Motion to Dismiss Civil Action No. 12510-82 came on before me at this Term of Court in behalf of the Board of Trustees of Mt. Jezreel Baptist Church, and Reverend Harold E. Trammell, and upon consideration of the testimony, documentary evidence, and Reports of the Special Masters, Authorities submitted, and the Oppositions thereto, the Court makes the following:

FINDINGS OF FACT

I. As to Charles E. Williams, Plaintiff:

1. That Charles E. Williams, an attorney, is the same Charles E. Williams named plaintiff in Civil Action No. 3124-70, in the United States District Court for the District of Columbia.

2. That this suit was brought to challenge the action of the Mt. Jezreel Baptist Church in withdrawing the Right Hand of Fellowship from Charles E. Williams.

3. That Charles E. Williams did on September 23, 1975, appeal a ruling of the United States Court of Appeals (sic) for the District of Columbia. The Appellate Court, Court of Appeals, District of Columbia, remanded the case to the presiding Judge The Honorable Joseph C. Waddy, with directions for further proceedings. (See Opinion, Case No. 73-139, Exhibit No. 1.)

4. That following the remand of the case, both parties did consent and endorse an order, wherein a panel of five Baptist Ministers were designated to review the action of the Church in withdrawing the Right Hand of Fellowship from Charles E. Williams, plaintiff.

5. That upon consideration of the fact that the panel had begun to receive evidence in accordance with the Order Exhibit a Praecipe signed by Charles E. Williams, Blaine Friedlander, and Judge Joseph C. Waddy was entered in the case which stated:

"The Clerk shall kindly mark the above causes as settled and Dismissed with prejudice and without right of appeal."

6. That this panel of ministers submit (sic) its report, (see Exhibit 1) which concluded that the will of the church had been clearly expressed in the vote of 82 to 53 against the rehearing; and on November 24, 1972, a vote of 125 to 42. (See Exhibit 1.)

7. That from all the testimony and exhibits, the Report of the Special Masters, the Right Hand of Fellowship has not been restored to Charles E. Williams since November 24, 1972.

8. That Charles E. Williams took no appeal with respect to his membership in Mt. Jezreel Baptist Church, after the execution and filing of the Praecipe dismissing the case No. 3124-70, U.S. District Court or submission of the Report and recommendation by the Minister's Panel.

9. That the asserted claim of membership by this plaintiff is more than three years in duration.

10. That this plaintiff, a seasoned lawyer knew or should have known the history of this membership dispute and in particular that he signed and consented to be bound by

the recommendations of the Panel of Ministers, before whom he appeared and gave testimony. That he signed a Praecipe dismissing the case No. 3124-70 wherein the issue centered about his membership status.

II. As to Dr. Lorraine A. Williams, plaintiff:

1. That at the regularly called Church Conference February 23, 1979, the Board of Deacons presented a Recommendation (see Exhibit 8) which asked that the Right Hand of Fellowship be withdrawn from six members, to wit, William Belcher, Marion Stroud, Mildred Colbert, Emma Anderson (sic) and Lorraine Williams.

2. That Lorraine Williams was present at the Church Conference.

3. That a motion was made by Marie Johnson and seconded by Jackie Spearman to accept the Recommendation from the Board of Deacons withdrawing the Right Hand of Fellowship from Lorraine Williams, and the others, named herein.

4. That Lorraine Williams gave no objection or statement of dissent to the motion, prior to the vote. That there were approximately 100 persons present, and the vote carried by a clear majority of the members present. (See Exhibit 7.)

5. That since February 23, 1979, the Right Hand of Fellowship had not been restored to Lorraine Williams.

6. That the asserted claim of membership is more than three years in duration.

7. That she was present at the Church Conference and made no comment, challenge or objection to the approval of the recommendation from the Board of Deacons to withdraw the Right Hand of Fellowship from her.

8. That Lorraine Williams has taken no appeal from the action by the Church Conference of February 23, 1979.

CONCLUSIONS OF LAW AS TO BOTH PLAINTIFFS

1. That the Court has jurisdiction to examine the procedures and actions with respect to the expulsion or withdrawal of the Right Hand of Fellowship from these plaintiff's (sic).

2. That the Court having heard the testimony, reviewed the documentary evidence, in particular the case of C.A. No. 3124-70, brought in the United States District Court for the District of Columbia between Charles E. Williams and Reverend Harold E. Trammell, et al., and the Report and Recommendations of the Special Masters. The Court concludes that the action of the Mt. Jezreel Baptist

Church in withdrawing the Right Hand of Fellowship from both plaintiffs, herein, was proper and valid.

3. That as to Charles E. Williams, the prior determination of his membership in Mt. Jezreel Baptist Church is precluded by the determinations, to which he consented in the United States District Court for the District of Columbia.

3.(sic) That these plaintiffs not being members of the Mt. Jezreel Baptist Church at the time of the filing of this suit, lack standing to maintain this cause of action.

4. That this suit and several other related cases brought by Charles E. Williams, plaintiff, has placed a gross cloud on the title of the church property, 501 E Street, Southeast and 5th and E Streets, Southeast, which require and compel this Court in the exercise of its Equity power to protect the property and the interest of the total congregation, with respect to any disposition thereof.

ORDER

WHEREFORE, upon the foregoing Findings of Fact, it is by the Court this 24th day of March, 1989,

ORDERED,

1. That Defendants motion to Dismiss the Amended Complaint be and the same is hereby granted with prejudice.

2. That the sale of the property owned by Mt. Jezreel Baptist Church, 501 E Street, Southeast, be stayed pending an appraisal by Court appointed appraisers, and presentation of any outstanding or proposed contract(s) to the Court.

3. That with respect to fees and costs of this litigation, Charles E. Williams, an attorney and plaintiff by filing this spurious claim with full knowledge of the total history of membership is bound by Superior Court Rule 11 for and is therefore Ordered to pay 10 percent of all costs, herein, and counsel fees to present counsel of record as may be determined by this Court.

4. That the Special Masters and Receiver shall within thirty (30) days file their Final Reports and stand discharged from any further duties with respect to the office to which each was appointed.

/s/ William S. Thompson
WILLIAM S. THOMPSON
Presiding Judge